IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15661 of 2003

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANUBHAI DAHYABHAI PATEL - Petitioner(s)
Versus
COMMISSIONER & 1 - Respondent(s)

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Appearance :
MS HINA DESAI for Petitioner(s) : 1,
MS PAURAMI B SHETH for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 31/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

Heard learned Counsel Ms. Desai for the petitioner and Ms. Sheth for the respondents.

The petitioner has challenged, in this petition, impugned Judgment and order dated 7.4.2003, passed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short the “Tribunal”), in OA No 204/2000 with MA No.98/2001, disposing of the Application of the applicant – petitioner with certain directions.

It was submitted by Ms. Desai for the petitioner that admittedly the respondents were taking 16 hours work per day from the petitioner which was not permissible in law. As held by the Rajasthan High Court in its Judgment and order dated __/7/89 (Annexure:M) the respondents can take work from the petitioner at the most for 10 hours in a day. Though the Judgment of the Rajasthan High Court was cited by the petitioner before the Tribunal, the same was not properly considered.

From the impugned Judgment and order dated 7.4.2003 (Annexure : A) passed by the Tribunal it clearly appears that for the grievance of 1989 the petitioner – applicant had approached the Tribunal claiming the over-time allowances only in the year 2000 in view of the Judgment of the Rajasthan High Court at Annexure-M. Therefore, the claim of the petitioner – applicant for over-time allowance with effect from 30.3.1989 was found to be barred by the period of limitation. It is also clear from the impugned Judgment of the Tribunal that a reliance was placed on behalf of the petitioner – applicant before

the learned Tribunal of the Judgment of Civil Judge of Jamnagar in a Suit filed by him wherein the learned Civil Judge, while dismissing the Suit of the plaintiff, clarified that the defendants can not take duty for more than 8 hours a day from the petitioner. Though the said Judgment was delivered by the Civil Court, Jamnagar in 1995, for the reasons best known to him the petitioner – applicant approached the Tribunal after a period of 5 years. Thus, his past claim was dismissed on the ground of limitation. However, while disposing of his Application the learned Tribunal issued direction to the respondents that in future Rules should be followed by the respondents and they shall not take work of more than 10 hours per day from the applicant. If the work of more than 10 hours is taken from the applicant then on the claim submitted by the applicant he shall be paid over-time allowance for the said period.

From the above, it is clear that substantial justice is done by the learned Tribunal by its impugned Judgment and order dated 7.4.2003 while rejecting the claim of the applicant – petitioner regarding the over-time allowance from March, 1989 till the date of filing of the Application. When the learned Tribunal has given cogent reason while disposing of the Application then this Court would not like to interfere with such order in its supervisory jurisdiction under Article 227 of the Constitution. Though the petition is labelled both, under Article 226 & 227 of the Constitution, strictly speaking, it is a petition under Article 227 of the

Constitution, the scope of which is very narrow and limited.

For the reasons stated above, this petition is dismissed. Rule discharged. No order as to costs.

(B.J.SHETHNA,J.)

(M. D. SHAH, J.)

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